

WATER/SNR/TAC/AJT:jrb

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

WATER DIVISION

RESOLUTION NO. W-4453

January 8, 2004

R E S O L U T I O N

(Res. W-4453), MHC ACQUISITION ONE (SEWER), L.L.C. (MHC). ORDER AUTHORIZING THE ELIMINATION OF TEMPORARY RATE REDUCTION AND AUTHORIZATION TO CHARGE RATES FOR SEWER SERVICE AS INITIALLY APPROVED BY DECISION 98-12-077. THIS RESOLUTION ALSO AUTHORIZES MHC TO REIMPOSE THE PUBLIC UTILITIES COMMISSION REIMBURSEMENT FEE OF 1.4%.

SUMMARY

By Advice Letter No. 5 filed on October 27, 2003, MHC seeks to restore rates to be charged by MHC for sewer service provided to the residents of De Anza Santa Cruz Mobile Estates as previously authorized in Decision (D.) 98-12-077. This resolution grants rates for Mobile Home Residential Sewer Collection Service at \$29.91 per month.

BACKGROUND

By D.98-12-077, the Commission adopted and authorized rates to be charged by MHC for sewer service provided to the residents of De Anza Santa Cruz Mobile Estates.

MHC filed Advice Letter No. 4 dated March 28, 2000 informing the Commission of litigation instituted against it by the tenants of De Anza Santa Cruz Mobile Estates (De Anza) as a result of MHC's efforts to implement the rates adopted in D.98-12-077. Specifically, in Case No. CV 135991 filed in Superior Court, County of Santa Cruz, De Anza tenants who receive water and sewer service from MHC challenged the legal authority of MHC to charge them for water and sewer services at the rates approved by the Commission. Among other things, the De Anza tenants asserted that MHC had failed to obtain resale and franchise

authority from the City of Santa Cruz (which provides water and wastewater collection services to MHC), thereby rendering MHC's authority to charge Commission-approved rates for sewer service inapplicable. De Anza tenants sought punitive damages from MHC as its parent based upon MHC's implementation of Commission-authorized rates.

As the Commission was further informed by Advice Letter No. 4, MHC negotiated a settlement of the superior court action with the De Anza tenants. Pursuant to the settlement, MHC agreed to provide a monthly settlement credit to be given to each customer until such a time as a court of law or the City of Santa Cruz finds or acknowledges that the City's resale and/or franchise authority requirements do not apply to MHC water utility services or that MHC is not otherwise barred from lawfully charging De Anza tenants for sewer services at rates approved by the Commission even if the City's resale and/or franchise authority requirements are held to apply to MHC's sewer utility services.

The temporary rate reduction required by settlement agreement with De Anza tenants that was the subject of Advice Letter No. 4 provided for imposition of a monthly service charge equal to the "total monthly amount billed by the City of Santa Cruz to MHC for sewer service divided by the total number of residential sewer connections plus \$4.00". In effect, the temporary rate reduction represented a temporary credit equal to the differential between the amount each customer would be charged for sewer service at the Commission-established rate (\$29.91 per month) and the amount each customer would be charged if each customer were billed pro rata share of the costs billed by the City to MHC for services provided by the City to De Anza plus \$4.00 (approximately \$19.50 per month).

Under the terms of the settlement agreement with De Anza tenants, upon issuance of a court finding or City acknowledgment as set forth above, the temporary sewer service rate/temporary settlement credit shall be automatically eliminated and replaced by the sewer service rate (\$29.91 per month) as originally approved by the Commission. In settlement of separate litigation between the City of Santa Cruz and MHC, an agreement has been negotiated between the City and MHC, which expressly sets forth the City's

acknowledgment that the franchise authority requirements do not apply to MHC's sewer collection utility services.¹

DISCUSSION

As a result of the City of Santa Cruz's express acknowledgment that MHC, as a public utility certified by the Commission, is exempt from the provisions of the City's franchise ordinance, the condition precedent to elimination of the temporary rate reduction/settlement credit as set forth in the negotiated agreement between the De Anza tenants and MHC, as described in Advice Letter No. 4, has now been fully met.

MHC hereby requests elimination of the temporary rate reduction and authorization to charge rates for its sewer service as initially approved by D.98-12-077.

In addition, MHC hereby requests authority to reimpose the Public Utilities Commission Reimbursement Fee of 1.4%.

NOTICE AND PROTESTS

In accordance with General Order 96-A, Section III.G., a copy of MHC's Advice Letter No. 5 was mailed to the residents of De Anza Santa Cruz Mobile Estates, along with information regarding the process for protesting the requested rate revisions. On November 4, 2003, the Water Division received one protest from the Treasurer of the De Anza Santa Cruz Homeowners Association representing the residents of the De Anza Santa Cruz Mobile Home Park. This protest asserts that the proposed sewer charge is invalid as it is in violation of D.01-05-058 arguing that such a sewer system is not subject to regulation by the CPUC.

This protest is without merit. The propriety of MHC having a Certificate of Public Convenience and Necessity (CPCN) has been formally addressed by the Commission in two subsequent proceedings: a) D.01-07-024 dated July 12, 2001,

¹ MHC submitted a copy of this "Settlement Agreement" in its advice letter filing as evidence of the settlement. This document was submitted pursuant to Public Utilities Code Section 583 and MHC requests that it be treated as confidential.

which affirmed that MHC's CPCN, previously granted in D.98-12-077, is valid;² and b) D.01-11-034 dated November 8, 2001, in which the City of Santa Cruz made a second attempt to challenge the validity of MHC's CPCN by requesting a rehearing of D.01-07-024 and the Commission denied the City's request for a rehearing and reiterated the validity of MHC's CPCN.

In D.01-11-034, Commission stated that: "Applicant argues that we erred in failing to revoke the CPCN granted in D.98-12-077 because that decision erroneously granted authority to MHC to operate a sewer system. The City alleges that this Commission has no jurisdiction over the operation of a sewer system in a mobile home park where the park and water system are owned by a single owner, citing D.01-05-058, issued in I.98-12-012. Applicant is once again posing arguments that should have properly been brought in a timely application for rehearing of D.98-12-077 but were not. We reiterate that a complaint brought under Section 1702 is not the proper proceeding to complain that the original decision granting a CPCN was in error. D.98-12-077 is now final and pursuant to Section 1709, cannot be collaterally attacked."

FINDINGS

1. MHC has a valid CPCN to provide sewer service to the residents of De Anza Santa Cruz Mobile Estates.
2. MHC's request to reimpose sewer rates to \$29.91 per month, as authorized in D.98-12-077, is reasonable and should be adopted.
3. MHC's request to reimpose the Public Utilities Commission Reimbursement Fee of 1.4% is reasonable and should be adopted.
4. This is an uncontested matter subject to the public notice comment exclusion of Public Utilities Code Section 311(g)(3).

² Decision 01-07-024 was based on a complaint filed by the City of Santa Cruz seeking revocation of MHC's CPCN.

THEREFORE IT IS ORDERED THAT:

1. MHC Acquisition One (Sewer), L.L.C.'s request to reimpose sewer rates to \$29.91 per month, as authorized in D.98-12-077, is adopted.
2. MHC Acquisition One (Sewer), L.L.C.'s request to reimpose the Public Utilities Commission Reimbursement Fee of 1.4% is adopted.
3. This resolution is effective today.

I certify that the foregoing resolution was duly introduced, passed, and adopted at a conference of the Public Utilities Commission of the State of California held on January 8, 2004; the following Commissioners voting favorably thereon:

WILLIAM AHERN
Executive Director